

CLAIMS RESULTING FROM ACTS OF MEMBERS OR CIVILIAN EMPLOYEES OF ARMED FORCES

*Exchange of notes at Washington October 23, 1946, and January 23,
1947, with annex*

Entered into force January 23, 1947; operative from June 6, 1944¹

61 Stat. 2876; Treaties and Other
International Acts Series 1622

The British Ambassador to the Secretary of State

BRITISH EMBASSY,
WASHINGTON, D.C.,
October 23, 1946

No. 581
REF: 403/24/46

SIR,

I have the honour to inform Your Excellency that discussions which have taken place between representatives of the United Kingdom and the United States of America, concerning the mutual forbearance by the Governments of the United Kingdom of Great Britain and Northern Ireland and of the United States of America from asserting claims arising from matters in which members and civilian employees of the respective armed forces are concerned, have led to agreement in the terms set out in the annex hereto.

2. His Majesty's Government in the United Kingdom have considered and approved the provisions of the annex.

3. I shall be grateful if Your Excellency will inform me whether the United States Government likewise approve the said provisions and whether they agree that the present note and Your Excellency's reply shall be regarded as constituting an Agreement between our two Governments in this matter.

I have the honour to be, with the highest consideration, Sir,
Your most obedient, humble Servant.

INVERCHAPEL

The Honourable

JAMES F. BYRNES,
*Secretary of State
of the United States,
Washington, D.C.*

¹ Except as to claims by third parties determined prior to Nov. 12, 1945.

ANNEX

(W6037/15/64)

ARTICLE I

(1) Each contracting Government agrees to bear its own loss and to forbear from asserting on its own behalf against the other any claim in relation to the loss, destruction or damage to its property, or injury to or death of any members or civilian employees of its Armed Forces resulting from any acts, omissions or other activities during the operation of this Agreement of any members or civilian employees of the Armed Forces of the other contracting Government.

(2) The provisions of paragraph (1) of this Article shall not apply to the following claims—

- (i) Claims in relation to loss, destruction or damage to property or to injury or death resulting from combat activity.
- (ii) Claims based on the taking for military purposes of the property of either contracting Government by members or civilian employees of the Armed Forces of the other contracting Government.
- (iii) Claims made by or on behalf of individuals or by or on behalf of private associations, partnerships, corporations or other nongovernmental bodies.

ARTICLE II

(1) (i) Subject to the provisions of paragraph (3) of this Article, claims of third parties (other than enemy nationals) arising out of incidents involving vehicles of both contracting Governments shall be submitted for investigation and determination as to liability to the United States Claims Service if the incident occurs in a United States controlled area or to the British Claims Service if the incident occurs in a British controlled area, but no liability shall be assumed and no settlement of a claim effected by either Government with respect to any such claim unless the authorities appointed by the other contracting Government for the purpose of reviewing such claims decide in the particular case that such liability exists.

(ii) For the purpose of this Agreement the expression "claims of third parties" shall mean claims based on the acts or omissions of the drivers or riders of vehicles which are the property of either Government brought against either contracting Government by any person other than the drivers or riders.

(2) If it is found that the incident resulted from negligence or fault attributable to both contracting Governments, the cost of settlement will be borne equally between them, irrespective of the relative degree of negligence or fault attributable to each Government. Neither contracting Government shall be liable to contribute to the cost of settlement where no negligence or

fault is attributable to either Government or where the incident results from combat activity.

(3) If any such claim by a third party falls within the matters which are the subject of reciprocal aid under the Reciprocal Aid Agreements of 1944 in force between the United States and France,² the Netherlands³ and Belgium,⁴ or of mutual aid under the Mutual Aid Agreements of 1944 in force between the United Kingdom and France,⁵ the Netherlands⁶ and Belgium,⁷ such claims shall be investigated in the country in which the incident occurred by the authorities provided under the respective Reciprocal or Mutual Aid Agreement. If such authorities decide that both the Government of the United States and the Government of the United Kingdom are liable, the cost of settlement of the claim as between the Government of the United States and the Government of the United Kingdom, shall be charged as reciprocal aid to the United States and as mutual aid to the United Kingdom in equal proportions irrespective of the degree of fault attributable to either Government. The provisions of this paragraph shall not, however, be read as affecting any existing right of the Government of the United States or of the Government of the United Kingdom as against the Government of the country in which a claim is investigated under this paragraph to consider and decide whether such charge should be treated as reciprocal or mutual aid under the respective Reciprocal or Mutual Aid Agreement.

ARTICLE III

This Agreement shall apply to claims in relation to acts, omissions or other activities occurring in any part of the world.

ARTICLE IV

(1) This Agreement shall be deemed to have come into force on the 6th June, 1944, except as to such claims by third parties as may have been determined prior to the 12th November, 1945.

(2) This Agreement shall supersede, as from the 6th June, 1944, the arrangement for mutual forbearance from a certain class of claims embodied in paragraph 11 of the annex to the Notes exchanged in London on the 29th February, 1944,⁸ by His Majesty's Principal Secretary of State for Foreign Affairs and the United States Ambassador, but the arrangement made by exchange of notes on 29th February, 1944, remains in full force as to claims arising out of incidents which occurred before the 6th June, 1944.

² EAS 273, *ante*, vol. 7, p. 1060, FRANCE.

³ EAS 326, *ante*, vol. 10, p. 154, NETHERLANDS.

⁴ EAS 313, *ante*, vol. 5, p. 582, BELGIUM.

⁵ Not printed.

⁶ *British and Foreign State Papers*, vol. 145, p. 437.

⁷ British Treaty Series No. 1 (1945); 90 UNTS 295.

⁸ TIAS 1602, *ante*, p. 660.

ARTICLE V

This Agreement shall remain in force during the period of the present joint participation by the Governments of the United States and of the United Kingdom in any military operation or military occupation but if before the period of joint participation expires either contracting Government gives to the other a written notice of its intention to terminate this Agreement, the Agreement shall cease to have effect three months after the date of such notice.

ARTICLE VI

This Agreement shall not be deemed to modify or affect the provisions of the Agreement between His Majesty's Government in the United Kingdom and the United States Government for the Provision of Mutual Aid concerning Certain Problems of Marine Transportation and Litigation signed at London on the 4th December, 1942.⁹

The Secretary of State to the British Ambassador

JAN 23 1947

EXCELLENCY:

I have the honor to acknowledge the receipt of your note No. 581 of October 23, 1946 to which was annexed the text of a proposed agreement concerning the mutual forbearance by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland from asserting claims arising out of matters in which members or civilian employees of the respective armed forces of the two countries are concerned.

The terms of the proposed agreement are acceptable to this Government, and your Excellency's note and this reply thereto shall be regarded as constituting an Agreement between our two Governments in this matter.

Accept, Excellency, the renewed assurances of my highest consideration.

DEAN ACHESON
For the Secretary of State

His Excellency

The Right Honorable

THE LORD INVERCHAPEL, P.C., G.C.M.G.,
British Ambassador.

⁹ EAS 282, *ante*, p. 631.